

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James Curtis VanKirk,
Appellant,

v.

Clay County Board of Equalization,
Appellee.

Case No: 13R 230

Decision and Order Reversing Clay
County Board of Equalization

1. A Single Commissioner hearing was held on December 19, 2013, at Hamilton County Courthouse, 1111 13th , LL NE Corner, Aurora, Nebraska, before Commissioner Salmon.
2. James Curtis VanKirk (the Taxpayer) was present at the hearing.
3. Linda Whiting, Clay County Assessor, was present for the Clay County Board of Equalization (the County).
4. The Subject Property (Subject Property) is residential parcel improved with a dwelling, with a legal description of: Pt. Lot 18, W ½ SE ¼ SW ¼ 2-7-5, Sutton, Clay County, Nebraska.

Background

5. The Clay County Assessor assessed the Subject Property at \$175,815 for tax year 2013.
6. The Taxpayer protested this value to the Clay County Board of Equalization and requested an assessed value of \$88,250 for tax year 2013.
7. The Clay County Board of Equalization determined that the assessed value of the Subject Property was \$175,815 for tax year 2013.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."²

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴
11. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
14. The Taxpayer asserted that the Subject Property was overvalued for 2013, and provided the Commission with an appraisal with an effective date of January 1, 2013. The appraiser was not available to answer questions of the Commission or Assessor.
15. The Taxpayer asserted that the dwelling only had one non-conforming bedroom. He asserted that the market value would be less than properties with conforming bedrooms. He provided several properties he asserted the county valued less than the Subject Property but with 3 or more bedrooms. He asserted that the county could not use the value per square foot like the homes provided to the Commission.
16. The Assessor explained that the Subject Property had been valued using the cost approach. She noted that the Subject Property had been valued using the new pricing and several of the comparable properties the Taxpayer provided were still valued using the old pricing. She noted that the comparable properties would be updated on the new pricing like the Subject Property during their reviews. She noted that reviews are on a six year rotation per Nebraska Statute.
17. The Taxpayer asserted that he had spoken with a realtor who gave a market price of \$80,000 to \$100,000 for the Subject Property because of the Subject Property’s poor location. The Realtor was not present at the hearing.

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

18. The Assessor asserted that there were not sales or properties similar to the Subject Property in Clay County. She was concerned that the appraisal used adjustments that were too large. Both the Appraiser and Assessor agreed that there were not sales similar to the Subject Property and adjustments needed to be made.
19. The Commission notes that the Appraiser used curable functional obsolescence due to an inferior floor plan. He noted that dwellings with unusual layouts or peculiar floor plans may have limited market appeal. He explained the large adjustments and noted that the functional utility adjustment was made on an estimated cost-to-cure the one bath and non-conforming bedroom.
20. The Commission gives great weight to the Appraiser and his adjustments and finds the 2013 valuation of the Subject Property to be \$140,000.
21. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Clay County Board of Equalization determining the value of the Subject Property for tax year 2013, is Vacated and Reversed.
2. That the Taxable value of the Subject Property for tax year 2013 is:

Land	\$ 10,475
<u>Improvements</u>	<u>\$129,525</u>
Total	\$140,000
3. This Decision and Order, if no further action is taken, shall be certified to the Clay County Treasurer and the Clay County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2013.

7. This Decision and Order is effective on December 27, 2013.

Signed and Sealed: December 27, 2013

SEAL

Nancy J. Salmon, Commissioner